

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT**

**NASHVILLE, TENNESSEE**

**MARCH 29, 2000**

<b>IN RE:</b>	)	
	)	
<b>APPLICATION OF 2ND CENTURY</b>	)	<b>DOCKET NO. 99-00632</b>
<b>COMMUNICATIONS, INC. FOR A</b>	)	
<b>CERTIFICATE OF PUBLIC CONVENIENCE</b>	)	
<b>AND NECESSITY TO PROVIDE COMPETING</b>	)	
<b>LOCAL AND INTEREXCHANGE</b>	)	
<b>TELECOMMUNICATIONS SERVICES IN</b>	)	
<b>THE STATE OF TENNESSEE</b>	)	

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**ORDER GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY**

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On January 26, 2000, this matter came before the Tennessee Regulatory Authority ("Authority") upon the Application of 2<sup>nd</sup> Century Communications, Inc. ("2<sup>nd</sup> Century") for a Certificate of Public Convenience and Necessity as a Competing Telecommunications Service Provider (the "Application") to offer a full array of telecommunications services within the State of Tennessee. The Application was made pursuant to Tenn. Code Ann. § 65-4-201, *et seq.*

**LEGAL STANDARD FOR GRANTING CCN**

2<sup>nd</sup> Century's Application was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann. § 65-4-201 provides, in part:

- (a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other

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territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without first having obtained, in like manner, a similar certificate. . . .

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(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial and technical abilities to provide the applied for services.

An authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.

(d) Subsection (c) is not applicable to areas serviced by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.

In addition, pursuant to Tenn. Code Ann. § 65-5-212, competing telecommunications providers are required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses, and (2) information or programs that might provide technical assistance to such businesses.

## INTERVENORS

Public notice of the hearing in this matter was made by the Authority's Executive Secretary, pursuant to Tenn. Code Ann. § 65-4-204.

On October 13, 1999, Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company, Inc. and Tennessee Telephone Company (collectively, the "Intervenors") petitioned the Authority to intervene. On October 15, 1999, 2<sup>nd</sup> Century filed a letter with the Authority stating that 2<sup>nd</sup> Century does not intend to offer local exchange service in areas in Tennessee served by an incumbent local exchange company with fewer than 100,000 access lines as defined in Tenn. Code Ann. § 65-4-201(d). On December 7, 1999, the Authority granted such petition to intervene. By letter of December 29, 1999 to the Authority, counsel for the Intervenors stated that, due to the representations in 2<sup>nd</sup> Century's October 15, 1999 letter, the Intervenors' would limit their participation to that of an observer.

The Intervenors did not oppose 2<sup>nd</sup> Century's Application, submit testimony, or actively participate in the hearing.

## 2<sup>nd</sup> CENTURY'S HEARING

The hearing relative to 2<sup>nd</sup> Century's application was uncontested. At the hearing held on January 26, 2000, 2<sup>nd</sup> Century was represented by Mr. H. LaDon Baltimore of Farrar & Bates, 211 7<sup>th</sup> Avenue North, Suite 420, Nashville, Tennessee 37219. In addition, Mr. Michael B. Reith, 2<sup>nd</sup> Century's Director of Regulatory and Industry Relations, presented testimony and was subject to examination by the Authority's Directors. Upon 2<sup>nd</sup> Century's conclusion of the proof in its case, the Authority granted its Application based upon the following findings of fact and conclusions of law:

## **I. APPLICANT'S QUALIFICATIONS**

1. 2<sup>nd</sup> Century was incorporated under the laws of the State of Delaware and received its Certificate of Authority to transact business in the State of Tennessee on July 15, 1999.

2. The complete street address of 2<sup>nd</sup> Century's principal place of business is 7702 Woodland Center Boulevard, Suite 50, Tampa, Florida 33614. The phone number is (813) 935-8866, and the fax number is (813) 930-8813. 2<sup>nd</sup> Century's counsel is H. LaDon Baltimore, referenced above, as well as Jonathan E. Canis and Erin Swansiger of Kelley Drye & Warren, LLP, 1200 19<sup>th</sup> Street, N.W., Suite 500, Washington, DC 20036.

3. The Application and supporting documentary information existing in the record indicate that 2<sup>nd</sup> Century has the requisite technical and managerial qualifications necessary to provide a full array of local exchange and interexchange telecommunications services within the State of Tennessee on a facilities-based and resale basis. 2<sup>nd</sup> Century's management and technical teams have particular expertise in the development and deployment of facilities-based and resold telecommunications services.

4. 2<sup>nd</sup> Century has the necessary capital and financial qualifications to provide the services it proposes to offer.

5. 2<sup>nd</sup> Century has represented that it will adhere to all applicable policies, rules and orders of the Authority.

## **II. PROPOSED SERVICES**

1. Initially, 2<sup>nd</sup> Century intends to provide facilities-based and resold local exchange telecommunications services, resold interexchange telecommunications services and exchange access in Nashville and the surrounding communities as well as in Memphis.

2<sup>nd</sup> Century intends to provide its proposed services primarily in the existing service areas of BellSouth in the Nashville area, but is requesting statewide authority in the event it decides to expand its operations in the future. 2<sup>nd</sup> Century intends to offer an integrated, bundled service offering, including basic local and long distance voice, data transmission and Internet access to small and medium-sized business customers in Tennessee. 2<sup>nd</sup> Century also intends to offer switched access services in Tennessee.

2. Except as may be authorized by law, 2<sup>nd</sup> Century does not intend to serve any areas currently being served by an incumbent local telephone company with fewer than 100,000 total access lines where local exchange competition is prohibited pursuant to Tenn. Code Ann. § 64-4-201(d).

### **III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY**

Upon a review of the Application and the record in this matter, the Authority finds that approval of 2<sup>nd</sup> Century's Application would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications service markets in the state and by fostering the development of an efficient technologically advanced statewide system of telecommunications services.

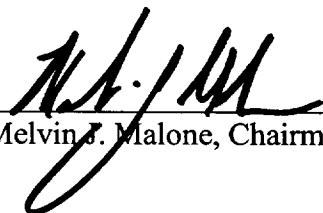
### **IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM**

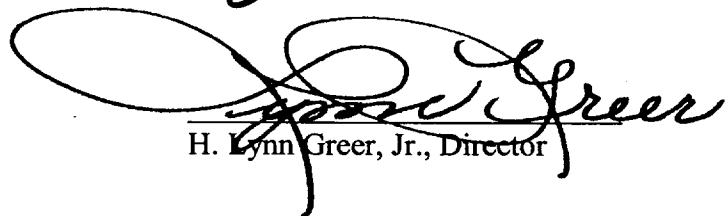
1. Pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules, 2<sup>nd</sup> Century has filed a satisfactory small and minority-owned telecommunications business participation plan.

2. 2<sup>nd</sup> Century has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

**IT IS THEREFORE ORDERED THAT:**


1. The Application of 2<sup>nd</sup> Century is approved;
2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from the date of this Order; and
3. Any party aggrieved with the Authority's decision in this matter has the right of judicial review of filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

  
Melvin J. Malone, Chairman

  
H. Lynn Greer, Jr., Director

  
Sara Kyle, Director

ATTEST:

  
K. David Waddell, Executive Secretary